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petitioners are not entitled to maintain the proceedings, not being in fact creditors, a motion to limit the issues to the first two questions, excluding from the jury the question of the right of the petitioners to maintain the suit, will be granted.

Section 19a of the Bankruptcy Act specifies the above two issues which an alleged bankrupt may require to be submitted to a jury. The gist of this case is whether, under Const. U. S., Amend. 7, a defendant has an absolute right to have submitted to a jury the question whether the petitioners are qualified to maintain the suit. It is well settled that this amendment applies only to courts of law and that there is no absolute right to a trial by jury in a court of equity. *McClave v. Gibb*, 157 N. Y. 413. As bankruptcy is essentially a division of equity, *In re Anderson*, 23 Fed. 482, it is reasonable that this rule of equity is alike applicable in bankruptcy. *In re Christenson*, 101 Fed. 243; *Simonson v. Sinshiener*, 100 Fed. 426. This reasoning is supported in *Barton v. Barbour*, 104 U. S. 106, in construing a provision in a former act very similar to the section of the present statute here involved. Act of 1867, Sec. 41; *Bill, Ass'n. v. Beckwith*, Fed. Cas. 1,406. The principal case, in holding that a demand for a trial by jury can be had in bankruptcy in only the two cases specified in the statute, seems in consonance with the few decisions that have been rendered directly on the subject, but is treated as questionable in *Brandenburg on Bankruptcy* (3d ed.), Secs. 508-511.

**BANKRUPTCY—JURISDICTION—EXEMPT PROPERTY—PROSECUTION OF ACTION IN STATE COURT.**—*IN RE RICHARDSON*, 11 AM. B. R. 379.—A creditor, holding a note against property of a bankrupt in which right of redemption has been waived, petitioned for stay of bankruptcy proceedings while he sued in a State court for a lien upon the exempt property. *Held*, that a court of bankruptcy has jurisdiction over such claims and can afford relief equivalent to that of a State court, hence the petition should be denied.

Doubt as to what the real law is on the question of jurisdiction involved in this case led the referee to announce this decision avowedly "with much difference." Since the title of the exempt property does not vest in the trustee, as does that of the unexempt property, Bankruptcy Act of 1898, Sec. 70a, it is only reasonable that claims against such property should never come within the jurisdiction of the court of bankruptcy. The decision to the contrary in the present case is sustained, to a degree, by *In re Tune*, 115 Fed. 906, and by a dictum of Shiras, J., in *In re Little*, 110 Fed. 661. But the preponderant authority is unquestionably against this holding, denying the jurisdiction of a court of bankruptcy to adjudicate claims against exemptions. *In re Bass*, Fed. Cas. 1,891; *In re Camp*, 91 Fed. 745; *Sellers v. Bell*, 94 Fed. 801; *In re Hill*, 96 Fed. 185; *In re Black*, 104 Fed. 289; *In re Swords*, 112 Fed. 661. The present decision is therefore grounded on very poor authority. See *Collier on Bankruptcy* (4th ed.), 78-81; *Bardes v. Bank*, 178 U. S. 524.

**CARRIERS—ILLEGAL COMBINATIONS—UNJUST DISCRIMINATION.**—*KELLOGG v. SOWERBY*, 87 N. Y. SUPP. 412.—Owners of elevators formed an association, which contracted with railroad companies to receive a fixed price per bushel for all grain handled at a certain point, whether by themselves or by outside companies. In pursuance of this agreement, the railroads refused to deliver grain to the plaintiff, who had not joined the association, except on the pay-

ment by the shipper of an additional charge, thus ruining plaintiff's business. *Held*, that the association and railroads were liable for damages sustained by plaintiff.

The discrimination against the plaintiff was unlawful, and as the association was a party to the illegal agreement, their liability is co-extensive with that of the railroads. It is a well established principle of law that a common carrier cannot make unjust discriminations either in granting carriage or in carrying for some at a less rate than for others. *McDuffee v. Ry. Co.*, 52 N. H. 430; *R. R. Co. v. Rinard*, 46 Ind. 293; *R. R. Co. v. Ervin*, 118 Ill. 250. But in many instances a discrimination has been sustained on the ground that it was not unreasonable. *Johnson v. R. R. Co.*, 16 Fla. 623; *R. R. Co. v. People*, 67 Ill. 11. But a railway company cannot charge one rate for delivering grain at a particular elevator in a city, and a higher rate for delivering at another elevator in the same city, and equally accessible. *Vincent v. Ry. Co.*, 49 Ill. 33. At common law a carrier is not bound to treat all with absolute equality. *Ry. Co. v. Gage*, 12 Gray 393; *Sargent v. R. R. Co.*, 115 Mass. 422; *Menacho v. Ward*, 27 Fed. 529; and it has been held that a company may discriminate in favor of persons shipping large quantities of freight. *R. R. Co. v. Forsaith*, 59 N. H. 122; *Nicholson v. Ry Co.*, 1 Nev. & Macn. 121; *contra*, *Scofield v. Ry. Co.*, 43 Ohio St. 571.

CONSTITUTIONAL LAW—EMINENT DOMAIN—FISHING RIGHTS.—*ALBRIGHT v. PARK COMMISSION*, 57 ATL. 398 (N. J.).—A statute providing that the right to take fish from inland lakes be acquired by eminent domain for public enjoyment, *held*, unconstitutional, such right not being one of use, but of mere pastime. Gummere, C. J., and Vroom, J., *dissenting*.

In this case the decision rests on the distinction between the right to acquire property for park purposes, which the State has, *Shoemaker v. U. S.*, 147 U. S. 282, for the benefit of the public at large, and the acquisition of property by the State for a limited benefit to a small number of people. It is usually considered a question for the legislature to determine whether the public benefit is sufficiently great to justify the exercise of eminent domain, *Water Co. v. Stanley*, 39 Hun. 428; *Com. v. Breed*, 4 Pick. 463; *State v. Morris Aque. Co.*, 46 N. J. L. 495, though the courts will always rectify a gross abuse of this power. *Buckingham v. Smith*, 10 Ohio 288; *Coster v. Water Co.*, 18 N. J. Eq. 64. And they will look with particular care that the use to which the property is to be put, be public, especially in the case of real property, *Heyward v. New York*, 8 Barb. 488; *Taylor v. Porter*, 4 Hill 149. Being a grant by the government, it would be repugnant to the Constitution for the State to violate a contract for other than public purposes.

CONSTITUTIONAL LAW—EXPORTS—TAXATION.—*CORNELL v. COYNE*, 24 SUP. CT. 383.—*Held*, that the same tax on cheese manufactured solely for exporting as is laid on other cheese, is not obnoxious to the constitutional provision forbidding a tax on exports. Fuller, C. J., and Harlan, J., *dissenting*.

In the dissenting opinion it is contended that as soon as an article is set aside for the purpose of exporting, it becomes an export within the meaning of the Constitution; that otherwise there is no way of preventing Congress from evading the Constitution by taxing exports before they are shipped.